

January 5, 1995      LETTER      To the Sevier River Water Users:

There has been some concern expressed lately by water users about the distribution of water on the Sevier River. There are basically two concerns: some diversions do not have adequate control structures and measuring devices; and some water users disregard instructions from the river commissioner or change head gates and diversion dams which have been set by the river commissioner.

The commissioner on the Sevier River is appointed each year by the State Engineer in accordance with Section 73-5-1 of the Utah, Code Annotated, 1953, as amended. Sections 73-1-14 and 73-5-3 of the code set forth the duties and authority of the commissioner. They state in part:

The river commissioner "shall divide, or cause to be divided, the water ... among the several appropriators entitled thereto in accordance with the right of each respectively, and shall regulate and control, or cause to be controlled, the use of such water by closing or partial closing of the headgates, ... or other controlling works of any ditch, canal, ... or other means of diversion as will prevent the waste of water or its use in excess of the quantity to which any appropriator is lawfully entitled"

The river commissioner "may attach to such controlling works a written notice, properly dated and signed, setting forth that such controlling works have been properly regulated and are wholly under his control, and such notice shall be a legal notice as to the facts therein contained to all parties interested in the division and distribution of the water"

"Any person, who in any way unlawfully interferes with, injures or destroys or removes any dam, head gate, weir, .... or other appliance for the diversion, apportionment, measurement or regulation of water, or who interferes with any person authorized to apportion water while in the discharging of his duties, is guilty of a misdemeanor, and is also liable in damages to any person injured by such unlawful act."

As stated in the statute quoted above, Ray Owens and Jim Walker, the commissioners on the Sevier River, are responsible to divide the water among the water users according to the water rights of record. In fulfilling this responsibility, they are authorized to change and set headgates or instruct water users to change and set headgates to assure an equitable distribution of water. If necessary, they may lock and place a tag on or near diversion dams or headgates indicating they are being regulated under the direction of the State Engineer. **Anyone who tampers with or changes diversion dams or headgates which are under regulation becomes liable for prosecution under the state statutes.**

Cooperation among water users and with the river commissioner is always important to the distribution of water, but it is especially important during dry years such as those we have experienced lately. I am asking that the water users cooperate with each other and with the commissioner. I would hope that it would not be necessary to go beyond the request of this letter.

Regarding control structures and measuring devices, Section 73-5-4 of the

Utah Code Annotated, 1953 as amended, states in part:

"Every person using water in this state shall construct or install and maintain a substantial head gate, cap, valve or other controlling works, weir, flume and measuring device at each point where water is diverted or turned out, for the purpose of regulating and measuring the quantity of water that may be used. ... If the owner of irrigation works, canals, reservoirs, wells, pumps or tunnels shall refuse or neglect to construct such headgates, caps, valves, flumes or measuring devices after thirty days notice to do so by the state engineer, the state engineer may forbid the use of water until the user thereof shall comply with this requirement, or the state engineer may proceed to construct or install or cause to be installed such controlling works or measuring devices, and the cost of the same shall be a lien against the lands and water rights served thereby, and the state engineer is authorized to bring such action in the name of the state to foreclose such lien."

As stated above, in the case of non-compliance the state engineer has the authority to forbid the use of water or to have the necessary construction done and the cost of the work becomes the responsibility of the water user.

If it appears that you do not have an adequate measuring device or headgate, you should make plans to correct the situation and contact the commissioners or Kirk Forbush, the regional engineer in Richfield, and inform them of your schedule for completing any necessary, construction, installation, or modifications.

These topics will be discussed by representatives of the Division of Water Rights at the annual meeting and there will be an opportunity to ask questions. If you have any questions prior to the meeting please contact Kirk Forbush, Regional Engineer, at 896-4429 or Lee Sim, Assistant State Engineer for Distribution, at 538-7380.

Sincerely,  
Robert L. Morgan, P.E.  
State Engineer

cc: Lee Sim      Kirk Forbush  
     Ray Owens    Jim Walker